



**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
DEPARTMENT OF LABOR**

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KY OSH PROGRAM INSTRUCTION 01-2006

January 6, 2006

SUBJECT

Cancellation of KY OSH PROGRAM INSTRUCTION 01-2005

PURPOSE

This INSTRUCTION cancels KY OSH PROGRAM INSTRUCTION 01-2005.

SCOPE

This INSTRUCTION applies only to residential construction activities in the Commonwealth of Kentucky as defined by 803 Kentucky Administrative Regulation (KAR) 2:412.

CANCELLATION

This INSTRUCTION cancels KY OSH PROGRAM INSTRUCTION 01-2005 and supersedes all federal residential construction fall protection directives.

INSTRUCTION

KY OSH Program staff shall use 803 KAR 2:412 for the enforcement and training of fall protection requirements during residential construction activities as defined by the KAR. Failure to provide fall protection during residential construction activities as defined by the KAR shall be cited as a violation of 803 KAR 2:412. Other sections of Subpart M or 29 CFR Part 1926 shall be cited as applicable.

POLICY

Employers engaged in residential construction activities shall provide the fall protection measures required by 803 KAR 2:412. Although KY OSH PROGRAM INSTRUCTION 01-2005 is cancelled, an employer may continue to follow the measures found in the INSTRUCTION and remain in compliance since those measures are as effective as 803 KAR 2:412.

ACTION

Employers engaged in residential construction activities shall provide the fall protection measures required by 803 KAR 2:412. However, since the measures in KY OSH PROGRAM INSTRUCTION 01-2005 are as effective as 803 KAR 2:412, an employer may continue to follow the measures found in the INSTRUCTION 01-2005 and remain in compliance with 803 KAR 2:412.

BACKGROUND

The Occupational Safety and Health Administration's (OSHA) requirements for fall protection in construction, found in 29 CFR Part 1926, Subpart M, are incorporated by 803 KAR 2:412.

The prior KAR incorporated 29 CFR 1926.501(b)(13) which required each employee engaged in residential construction activities six (6) feet or more above a lower level be protected by guardrail systems, safety net systems, or personal fall arrest systems unless another provision in paragraph (b) provides for an alternative fall protection measure. In 1995, OSHA issued Instruction STD 3.1, Interim Fall Protection Compliance Guidelines for Residential Construction. STD 3.1 provided interim fall protection guidelines for residential construction while OSHA undertook further rulemaking regarding the construction fall protection standards. STD 3.1 addressed the acceptable interim fall protection measures for compliance with 29 CFR 1926.501(b)(13) during the rulemaking period. OSHA strongly encouraged state plan programs in STD 3.1 to adopt the same or similar compliance guidelines. The Kentucky Occupational Safety and Health (KY OSH) Program agreed to follow STD 3.1.

In 1999, OSHA issued STD 3-0.1A, Plain Language Revision of OSHA Instruction STD 3.1, Interim Fall Protection Compliance Guidelines for Residential Construction. STD 3-0.1A cancelled STD 3.1 at the federal level. STD 3-0.1A represented a federal OSHA program change for which state adoption was not required. The KY OSH Program elected not to adopt STD 3-0.1A and continued to follow STD 3.1 until the issuance of KY OSH PROGRAM INSTRUCTION 01-2005.

Furthermore, the KY OSH Program is prohibited from adopting STD 3-0.1A and was most likely in ~~error~~ with the decision to follow STD 3.1 since both of those directives change the requirements of the standard. Kentucky Revised Statute 13A.130 states that an administrative body shall not by internal policy, memorandum, or other form of action modify a statute or administrative regulation or expand upon or limit a statute or administrative regulation.

On August 18, 2005, the Kentucky Occupational Safety and Health Standards Board adopted amendments to 803 KAR 2:412 addressing residential construction fall protection. The amended KAR, effective January 6, 2006, provides regulatory flexibility to employers engaged in certain residential construction activities. The amended KAR does not impose stricter requirements than those required by the former KAR.

TRAINING

29 CFR 1926.21 requires employers engaged in construction to instruct their employees in the recognition and avoidance of unsafe conditions. The specific fall protection training requirements at 29 CFR 1926.503 supplement and clarify the requirements of 29 CFR 1926.21 regarding the hazards addressed in Subpart M. 29 CFR 1926.503 establishes minimum training requirements for fall protection.

Training and retraining are critical and essential components of an effective fall protection program. The commitment and cooperation of employers and employees in preventing and controlling exposure to hazards is critical, not only for their own safety, but for that of others as well. That commitment and cooperation depends on their understanding what hazards they may be exposed to, why the hazards pose a threat, and how they can protect themselves and others from the hazards.

It is not suggested that an elaborate training program is required. The fall protection training requirements are performance based and compliance is determined on a case-by-case basis. 29 CFR 1926.503 is very detailed on the minimum elements of fall protection training that an employer must provide. Many of the elements are specific to the type of fall protection utilized and circumstances that employees may encounter at a particular jobsite.

KY OSH Program staff shall determine whether the employer has trained employees in the applicable requirements of 29 CFR 1926.503. Citations relating to fall protection training shall be issued as a violation of 29 CFR 1926.503 as applicable.

FALL PROTECTION PLANS

803 KAR 2:412 does not recognize the Sample Fall Protection Plan for Residential Construction found in Appendix E to 29 CFR Part 1926, Subpart M. 803 KAR 2:412 incorporates a "Non-Mandatory Sample Fall Protection Plan for Residential Construction." This "Non-Mandatory Sample Fall Protection Plan for Residential Construction" is a much simpler, user friendly guideline available to employers who choose to utilize it.

The KY OSH Program believes it is feasible to provide fall protection during residential construction activities. However, it is recognized that an isolated instance may exist when employee utilization of the fall protection measures found in 803 KAR 2:412 may be infeasible or creates a greater hazard. If an employer demonstrates that it is infeasible or creates a greater hazard to use fall protection as required in 803 KAR 2:412, the employer must implement a written fall protection plan. It is important to recognize that infeasible is not synonymous with inconvenient or expensive.

An employer who builds identical structures on multiple sites may have several standardized plans for many structures. A "canned" plan which contains material not applicable to the structure is not acceptable.

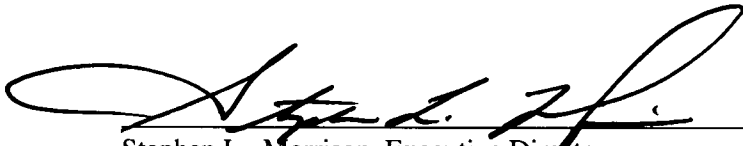
Citations relating to a fall protection plan(s) may be issued as a violation of 803 KAR 2:412 or 29 CFR 1926.502(k) as applicable.

ADDITIONAL RESOURCES

The KY OSH Program's Division of Education and Training offers cost free resources and training to employers and employees on acceptable methods of compliance during the residential construction activities. More information may be found at www.labor.ky.gov.

EFFECTIVE DATE

This INSTRUCTION is effective immediately and will remain in effect until cancelled or superseded.

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Stephen L. Morrison, Executive Director
Office of Occupational Safety and Health

A handwritten signature in black ink, appearing to read "Ron Blackwell".

Ron Blackwell, Director
Division of Education and Training

A handwritten signature in black ink, appearing to read "Steve Sparrow".

Steve Sparrow, Director
Division of Compliance